

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO, CA**

**JT4, LLC**

**and**

**Cases 28-CA-268967  
28-CA-271230**

**THOMAS JAMES QUICK, AN INDIVIDUAL**

*Rodolfo Martinez, Esq.*, for the Acting General Counsel.  
*Paul T. Trimmer, Esq. (Jackson Lewis, PC)*, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

**DICKIE MONTEMAYOR, Administrative Law Judge.** This case was tried before me on April 27, 2021, via the Zoom for Government videoconferencing platform. Charging Party filed a charge on November 10, 2020, an amended charge on November 10, 2020 and another separate charge on January 11, 2021, alleging that he was suspended and discharged in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). The cases were combined, and a consolidated complaint was issued. In addition to the suspensions and discharge, the complaint alleged that Respondent promulgated an overly broad and discriminatory directive requiring employees not to communicate with any other persons while they were suspended from work. Respondent filed an answer to the complaint denying that it violated the Act. After the hearing convened and the Acting General Counsel completed its case, Respondent moved to dismiss the complaint. The trial was adjourned, and the parties were afforded an opportunity to submit written submissions in support and in opposition to Respondent's motion. After considering the matter (including the submissions by both Respondent and Acting General Counsel) and based upon the detailed findings and analysis set forth below, I conclude that Respondent's motion to dismiss is well founded and is hereby GRANTED.

**FINDINGS OF FACT**

**I. JURISDICTION**

The complaint alleges, and I find that

1. (a) At all material times, Respondent has been a corporation with an office and a place of business in Las Vegas, Nevada (Employer's facilities), and has been

operating a technical services facility under contract with the United States Government.

(b) In conducting its operations during the 12-month period ending November 10, 2020 Respondent provided services valued in excess of \$50,00, including services at Respondent's facility, to the United States Government, thereby having a substantial impact on the national defense of the United States.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

- (a) Jarrett D. Jordan-President
- (b) Mary Dawn Lymangrover-Human Resources Specialist
- (c) Ray Sommer-Range Manager
- (d) Robert Ritter-Supervisor

## II. ALLEGED UNFAIR LABOR PRACTICES

Charging Party Thomas James Quick was employed by Respondent for nearly 7 years starting his employment in 2014. While employed at Respondent's facility, he was a Unix and Linux system administrator. Respondent is a defense contractor that provides support to the Department of Defense the nature of which is classified. Quick at the time of his employment was supervised by Robert Ritter and Wayne Wolf the department manager. Above Wolf was the range manager, Ray Sommers. During Charging Party's employment, a process existed for the employees to enter the secure work facility which involved employees meeting at a central location and then being transported via government transportation to the facility. The employees would not receive pay for the time spent traveling to the facility. Charging Party and other coworkers would discuss the fact that they were not paid for the time spent traveling to and from the facility frequently. Sometime in 2017 or 2018 Charging Party mentioned the lack of pay for transportation to Wolf in the context of suggesting that he would consider a position downtown (that presumably didn't present the same transportation scenario) to be a raise. In essence, he was suggesting that a downtown position with the same pay would be suitable for him since he would consider it a raise.

Mary Dawn Lymangrover was a human resources specialist at the facility during the time Charging Party was employed. In August of 2020, Lymangrover was assigned to investigate a complaint which had no relationship to Charging Party. While investigating that complaint she became aware of "stuff going on" in the unit Charging Party worked in. Upon further inquiry, Lymangrover uncovered a legion of allegations against Charging Party which included racist and sexist commentary. Lymangrover thereafter commenced an investigation into these allegations. She spoke with the female employees of the department each of which confirmed that Charging Party bore

responsibility for the sexually harassing conduct. During her interviews she took detailed notes.<sup>1</sup> (R. Exh. 12–15.) The work environment was characterized by those interviewed as “very toxic” and/or “toxic and hostile” and “shitty.” (R. Exh. 12–15.) After interviewing the employees, Lymangrover concluded that there was a, “general theme of . . . a toxic work environment with lots of harassment, sexual harassment, fear of retaliation, job loss and no support from their boss and they were led to believe that if they reported any of it, nothing would get done about it and in addition, they would be retaliated against.” (Tr. 63.) Lymangrover brought the matter to the attention of Sommer. The decision was made that Lymangrover would interview both Quick and Ritter regarding the allegations. Wolf was in the chain of command and was instructed to schedule the interviews. Lymangrover Sommer and Wolf were present during the interviews. Lymangrover characterized Charging Party’s interview as follows:

Q. Okay. Let's go through the notes and your memory about this interview with Mr. Quick. Mr. Wolff presented the allegations to Mr. Quick. Did he deny it?

A. No.

Q. Did he claim he never sexually harassed women?

A. No.

Q. What did he say?

A. He said that he makes jokes, but he didn't feel they were a big deal, that he admitted making off-color comments. He realizes that in himself, though, so he also makes self-deprecating comments. He's realized that it makes people unhappy, so he has corrected it by staying away. He knows what the lines are and what not to cross because Bob has counseled him verbally for it before. (Tr. 72).

After he was interviewed Charging Party was suspended. Sommer testified, “after having the information that Mary-Dawn had gathered and then talking with Mr. Quick and him indicating that he did indeed make comments to people, I suspended him because I wanted to make sure that the work environment we removed the harassment from the work environment and it would give us a chance to complete the investigation.” (Tr. 102.) (R. Exh. 9.) Sommer in consultation with Lymangrover determined that having Charging party return would “be in violation of JT4’s harassment policy.” (Tr. 102.) (R. Exh. 5, 18, 24.) Sommer signed off on a recommendation that Charging Party be terminated and forwarded it up the proper channels through HR, the legal department, and the president of the company. He did so because Charging Party “acknowledged that he would make comments to people that were out of line and made people uncomfortable. He acknowledged it and he didn’t deny any of the comments that [they] discussed.” (Tr. 102.) The investigation also led to the termination of Ritter for his role in the misconduct. (R. Exh. 5.)

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<sup>1</sup> Due to the offensive nature of the statements attributed to Charging Party, I have not reiterated them within the body of this decision. They are adequately referenced in Respondent’s Brief and in the record itself. (R. Exh. 12–15.)

## Analysis

### 1. Charging Party’s suspension and termination

5           The concept of concerted activity has its basis in Section 7 of the Act. Section 7 of the Act in pertinent part states: “Employees shall have the right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.” In order for the actions to be protected under the statute they must be both “concerted” and engaged in for the purpose of “mutual aid or protection.” *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). “[W]hether an employee’s activity is ‘concerted’ depends on the manner in which the employee’s actions may be linked to those of his coworkers. . . . The concept of ‘mutual aid or protection’ focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to ‘improve terms and conditions of employment or otherwise improve their lot as employees.’” *Id.* at 153. In general, to find an employee’s activity to be “concerted,” the employee must be engaged with, or on the authority of, other employees and not solely by and on behalf of the employee herself. See *NLRB v. City Disposal Systems*, 465 U.S. 822, 831 (1984); *Meyers Industries*, 268 NLRB 493, 497 (1984) (Meyers I), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986) (Meyers II), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The Supreme Court has observed, however, that “[t]here is no indication that Congress intended to limit [Section 7] protection to situations in which an employee’s activity and that of his fellow employees combine with one another in any particular way.” *NLRB v. City Disposal Systems*, 465 U.S. at 835; *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151 (2014). The Board has held that concerted activity includes cases “‘where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.’” *Meyers Industries*, 281 NLRB 882, 887 (1986) (Meyers II), affd. sub. nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Specifically, activity may still be concerted even if it involves: “only a speaker and a listener, but to qualify as such, it must appear at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of employees. . . . Activity which consists of mere talk must, in order to be protected, be talk looking toward group action . . . . [I]f it looks forward to no action at all, it is more than likely to be mere . . . griping.” *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964). The question of whether an employee has engaged in concerted activity is a factual one based on the totality of record evidence. See, e.g., *Ewing v. NLRB*, 861 F.2d 353 (2d. Cir. 1988).

40           The General Counsel must initially show that (1) the employee engaged in Section 7 activity, (2) the employer knew of that activity, and (3) the employer had animus against the Section 7 activity, which must be proven with evidence sufficient to establish a causal relationship between the discipline and the Section 7 activity. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 6, 8 (2019); see also *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1–2 (2020). Evidence is probative of unlawful motivation only if it adds support to a

reasonable inference that the employee’s Section 7 activity was a motivating factor in the employer’s decision to impose discipline. *General Motors LLC*, 369 NLRB No. 127 (2020).

If the General Counsel makes his initial case, the employer will be found to have violated the Act unless it meets its defense burden to prove that it would have taken the same action even in the absence of the Section 7 activity. See *Hobson Bearing International*, 365 NLRB No. 73, slip op. at 1 fn. 1 (2017). If the evidence as a whole “establishes that the reasons given for the [employer’s] action are pretextual—that is, either false or not in fact relied upon—the [employer] fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis.” *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).

After considering the totality of the evidence, I concur with Respondent that the evidence failed to establish elements essential to the Acting General Counsel’s claim. The evidence confirmed at most that Charging Party like other employees griped about the transportation policy but there is no evidence in the record to support the notion that this griping rose to the level of protected activity. The record is devoid of any evidence that would otherwise prove that the griping was anything other than mere talk. See *Quicken Loans*, 367 NLRB No. 112 (2019), (holding that mere griping was not concerted activity). There is no evidence in the record of any of the discussions looking toward group action of any kind. Charging Party’s mentioning that he would consider working at the downtown location a promotion because it wouldn’t require him to utilize government transportation in and of itself does not suggest that the conversation was in any way related to mutual aid or protection of other employees. Rather it merely highlights Charging Party’s subjective belief that he would derive some personal benefit if his work location was changed.

Nor is there any evidence to suggest that the person who made the decision to terminate Charging Party, Sommer was ever aware of his griping about the transportation policy and/or his conversations with Wolff. There is also an absence of evidence in the record either direct or circumstantial which would establish that the adverse action was in any way connected to and or motivated by Charging Party’s conversation in 2017 about his promotion and/or his everyday griping about the policy.

Assuming for the sake of argument that the Acting General Counsel had been successful in meeting its burden, the overwhelming weight of the evidence establishes that Respondent reasonably believed (a belief supported by the interviews of various coworkers of Charging Party) that Charging Party engaged in egregious harassing conduct and that its actions in terminating him were consistent with its anti-harassment policies.<sup>2</sup> (R. Exh. 5, 18, 24.) Nor is

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<sup>2</sup> Charging Party generally denies that he engaged in inappropriate harassing conduct. (Tr. 160–165). The only question presented is whether the employer held a good-faith belief that the employee engaged in the misconduct. As noted by the court in *Sutter Est Bay Hospitals*, 687 F. 3d 424, 434 (2012), “an employer who holds a good faith belief that an employee engaged in the misconduct in question has met its burden under *Wright Line*.” There is ample evidence in the record to support Respondent’s contention that its actions were taken based on a good-faith belief (acquired after conducting multiple investigatory interviews of Charging Party’s co-workers) that Charging Party engaged in misconduct. (R. Exh. 12–15.)

there a scintilla of evidence to establish that Respondent’s asserted reasons for the termination were pretextual and/or were in any way motivated by Charging Party’s complaints.

## 2. The admonition not to discuss the investigation while it was ongoing

Lyman grover testified that at the close her interviews she asked that the persons interviewed not discuss the investigation. She testified as follows: “I asked them I said please do not discuss this investigation with anyone while the investigation is going on so that we can have a fair and just investigation.” (Tr. 67.)<sup>3</sup> She also testified about her reasons for doing so. She testified that she did so to “protect the people that had reported it and also to try and prevent retaliation.” (Tr. 67.) After observing her testify I credit her testimony as being truthful. She appeared to testify in a forthright manner and appeared to easily recall the oral admonition given. The complaint alleged that Sommer promulgated an overly broad and discriminatory directive requiring its employees not to communicate with any persons while suspended from work. (See Complaint par. 4(b)). Charging Party alleged that he was told by Sommer that he would be placed on suspension until they completed the investigation and Sommer advised him, “just don’t talk to anyone else because we don’t want rumors getting out.” (Tr. 158.)

The Board’s decision in *Boeing Co.*, 365 NLRB No. 154 (2017), delineated the standards applicable to determine whether workplace rules are lawful under the Act. In *Boeing*, the Board set forth three categories of rules. In *Apogee Retail LLC*, 368 NLRB No. 144 (2019), the Board held that investigative confidentiality rules like the one in this case fall under the 1(b) Boeing category to the extent they are limited to open investigations. Under category 1(b) the Board finds that these types of rules are lawful for an employer to maintain because, “the potential adverse impact on protected rights is outweighed by justifications associated with the rule.” *Boeing* at 154. Applying the Board’s standard to this case, any adverse impact is outweighed by the Respondent’s desire to protect the fairness of the investigation and to protect others from retaliation. Even if Charging Party’s version of events is credited, the mere fact that Sommer articulated the desire to avoid “rumors” while the investigation was ongoing as an additional justification for confidentiality doesn’t in any way alter the result mandated by the Board’s decision in *Boeing* and *Apogee Retail LLC*, as discussed above the confidentiality rule is lawful.

## CONCLUSIONS OF LAW

1. Respondent’s actions of suspending and terminating the Charging party did not violate Section 8(a)(1) of the Act.
2. Respondent’s admonition to keep the investigation and suspension confidential while the investigation was ongoing did not violate Section 8(a)(1).

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<sup>3</sup> It is important to note that the admonition was limited only to the investigation that was taking place and not any other investigations that could have occurred in the future, thus the duration of the admonition was by its very terms limited. See *Watco Transloading, LLC*, 369 NLRB No. 93 fn 25 (2020).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

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**Order**

The complaint is dismissed.

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Dated, Washington, D.C. July 14, 2021

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**Dickie Montemayor**  
**Administrative Law Judge**

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<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.